TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 350. 81

THE SAXONVILLE MILLS, PLAINTIFF IN ERROR,

vs.

THOMAS RUSSELL, LATE COLLECTOR OF CUSTOMS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 9, 1882.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the district of Massachusetts, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between the Saxonville Mills, a corporation under the laws of the Commonwealth of Massachusetts, and having its principal place of business at Boston, in said district, plaintiffs, and Thomas Russell, late collector of customs for the revenue district of Boston and Charlestown, defendants, in an action of contract, a manifest error said happened, to the great damage of the said plaintiffs, as by their complaint appears—

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the second day of January, in the year of our Lord one thousand eight hundred and eighty-two.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—
JOHN LOWELL,
Circuit Judge.

2 CIRCUIT COURT OF THE UNITED STATES, } *ss:*
District of Massachusetts, }

And now here the judges of the circuit court of the United States in and for the district of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof, I, John G. Stetson, clerk of said circuit court of the United States in and for the district of Massachusetts, have hereto set my hand and the seal of said court, this twenty-second day of September, A. D. 1882.

[SEAL.] JOHN G. STETSON, *Clerk.*

3 UNITED STATES OF AMERICA, }
Massachusetts District, } *ss.*:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Wednesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and seventy-nine—

Before the Honorable Thomas L. Nelson, district judge.

4 THE SAXONVILLE MILLS, a corporation under the laws of the Commonwealth of Massachusetts, and having its principal place of business at Boston, in said Commonwealth, Plaintiff,

v.

THOMAS RUSSELL, late Collector of Customs for the Revenue District of Boston and Charlestown, Defendant.

In an action of contract.

1st count. And the plaintiff corporation says the defendant owes it seven thousand and seventy-six and $\frac{86}{100}$ dollars for money received by the defendant to the use of plaintiff corporation, according to the account hereto annexed.

Account Annexed.

BOSTON, *April* 14, 1874.

Thos. Russell, ex-Collector, to Saxonville Mills, Dr.

(1.) Jan'y 22, '74.	To excess of duty paid on 100 bales of wool, entered per Velox, Aug. 23, 1873	$2,184 30
5 (2.) Feb. 6, '74.	To excess of duty paid on 100 bales of wool, entered per Velox, Aug. 23d, 1873	2,184 30
(3.) Feb'y 25, '74.	To excess of duty paid on 60 bales of wool, entered per Velox, Aug. 23, 1873	1,319 50
(4.) Jan. 6, "	To excess of duty paid on 64 bales of wool, entered per Velox, Aug. 23, 1873	1,398 76
		$7,076 86

Second count. And also for that, on the day of the purchase of this writ, the defendant, being indebted to the plaintiff corporation in the sum of seven thousand and seventy-six & $\frac{86}{100}$ dollars demanded, exacted, and received of the plaintiff corporation, by the defendant, then and now collector of the customs for the revenue district of Boston and Charlestown, under color of a law of the United States for the collection of duties on imports (and by the plaintiff corporation paid under protest), and before that time had and received, by the defendant, to the use of the plaintiff corporation, in consideration thereof, promised to pay the same when he should be thereto

6 afterward requested; yet the said defendant has not paid the same or any part thereof, though thereto often requested; and the plaintiff corporation alleges that both the foregoing counts are for the same cause of action, to the damage of the said plaintiff, as it says, the sum of ten thousand dollars.

The writ in this cause is dated the fourteenth day of April, A. D. 1874, and was entered at the May term of this court, A. D. 1874, when and where the parties appeared by their respective attorneys. And on the eleventh day of September the following answer was filed, namely:

And now comes the said defendant, and for answer to the plaintiff's declaration and bill of particulars denies each and every allegation in each and every count thereof.

And the said defendant further says that he did not undertake or promise in manner and form, as the said plaintiffs have above complained. And of this he puts himself upon the country.

7 This cause was thence continued from term to term to the October term, A. D. 1876, when, to wit, Feb'y 15, 1877, the following agreed statement of facts was filed, namely:

The plaintiff, in August, 1873, imported into the port of Boston from Rosario, by the barke Velox, three hundred and twenty-four bales of unwashed Cordova wool and entered it in bond. It subsequently withdrew the same for consumption. The defendant, as collector of customs, assessed and exacted of the plaintiff a duty of six cents per pound less ten per centum on this wool upon the appraisement as hereinafter set forth. The plaintiff claimed that this wool was only legally liable to a duty of three cents per pound less ten per centum, and paid the extra three cents per pound under due protest, and reasonably appealed to the Secretary of the Treasury, who affirmed the decision and action of the defendant.

8 In due time and in conformity to law plaintiff brought this action to recover the extra three cents per pound less ten per centum. The pleadings may be referred to. As it appears by the invoice, this wool was bought in Rosario on the 28th day of March, 1873, and was shipped at Rosario on board the Velox for Boston on the fifth day of June, 1873, and the invoice was sworn to before the action U. S. consul on the 9th day of June, 1873. Rosario was the last port from whence it was exported to the United States, and it was invoiced there and entered at the custom-house in Boston at the price paid for it in the currency and weight in which it was bought, which, upon being reduced to United States currency and weight, showed the cost to be above twelve cents per pound. Between the time of purchase and the time of shipment and exportation to the United States, the market value or wholesale price of this wool fell at Rosario, and at the time and place of shipment

9 and exportation to the United States the market value or wholesale price was less than twelve cents per pound excluding charges in such port or place. The acting U. S. consul made under his official seal the following certificate upon the invoice, which is objected to by the defendant as incompetent and immaterial:

U. S. CONSULATE, ROSARIO, *June 10th*, 1873.

I, Thomas B. Wood, acting U. S. consul for Rosario, do hereby certify, after investigation, that the market value of unwashed Cordova wool at this place at the date of shipment of the annexed invoice was thirty-two to thirty-two and one-half Bolivian reals, equivalent to $24\frac{38}{100}$ to $24\frac{76}{100}$ reals fuerta per arroba net weight.

Given under my hand and seal, this day.

(Signed) THOMAS B. WOOD,
Acting U. S. Consul.

Which being reduced to United States weight and cur-
10 rency, shows a value per pound less than twelve cents at Rosario. In conformity with law and Treasury regulations upon entry of this merchandise by the plaintiff the proper number of designated packages thereof were sent to the public store, and this invoice was sent by the defendant as collector to the U. S. appraiser for his examination, appraisement, and report. The appraiser, after examination, made on the invoice the following report, and returned the same to the collector, as and for his appraisement, from which no appeal was claimed or taken to merchant appraiser: "Wool, class 3, dutiable at invoice value 6 cents per pound, less 10 per centum;" said report bearing date August 28, 1873; and upon this appraisement the collector assessed and exacted the duty as aforesaid. It is admitted and agreed, if it be material and competent, that the appraiser made the said report to the collector as and for his appraisement, believing that he had no
11 legal right to appraise the wool at less than the invoice value, although in fact he believed the true market value of said wool at the last port or place whence exported to the United States, at the time of exportation, excluding charges thereat, was less than twelve cents per pound. The plaintiff contended that this was not a legal or sufficient appraisement. The defendant, as collector, exacted the duty of six cents per pound, less ten per centum, upon the ground that whatever the market value or wholesale price of this wool might have been in Rosario at the time of shipment and exportation, inasmuch as the invoice showed the value to be above twelve cents per pound, it was legally liable to the duty exacted. This wool was of the third class named in the first section of the act of March 2d, 1867, 14 Stat., 560, which provides "that upon wools of the third class, the value whereof at the last port or place whence exported to the United States, excluding charges in such port, shall be twelve cents or less per pound, the duty shall be
12 three cents per pound. Upon wools of the same class, the value whereof at the last port or place whence exported to the United States, including charges in such port, shall exceed twelve cents per pound, the duty shall be six cents per pound."

If the court shall be of opinion upon the foregoing facts that said duty was illegally assessed and exacted of the plaintiff, then judgment shall be entered for the plaintiff for an amount equal to one-half of the duties paid in gold, with interest, to be ascertained by an assessor to be appointed by the court, and costs. On the contrary,

if the court shall be of opinion that the duty was properly assessed and exacted, judgment shall be entered for the defendant with costs.

CHAS. LEVI WOODBURY,
Att'y for Pff.
GEORGE P. SANGER,
U. S. Att'y, Att'y for Def't,

This cause was thereupon set down for hearing and fully heard by the court, the Honorable Daniel Clark, district judge of the
13 United States for the district of New Hampshire, duly assigned to hold said circuit court, sitting, and was thence continued, under advisement, from term to term, to this present term, and now, to wit, Jan'y 19, 1880, after due deliberation thereon, it is considered by the court, the Honorable Daniel Clark sitting as aforesaid, that the plaintiff take nothing by its said writ, and that the defendant recover of the said plaintiff its costs of suit, taxed at ———.

A true record.

Attest: JOHN G. STETSON, *Clerk.*

14 The following is a true copy of the opinion of the court in accordance with which judgment in this cause was rendered:

Opinion of the Court.

Circuit Court of the United States, District of Massachusetts. October Term, A. D. 1879, to wit, Jan'y 7th, 1880.

SAXONVILLE MILLS *v.* THOMAS RUSSELL.

Clark, J.: The act of June 30th, 1864, entitled "An act to increase duties on imports, and for other purposes," imposed a duty on unmanufactured wool, according to its grade of value, at the port whence exported to the United States, exclusive of charges in such port. If of the value of "twelve cents or less, three cents per pound; exceeding twelve cents, and not exceeding twenty-four cents per pound, six cents per pound; exceeding twenty-four cents per pound, and not exceeding thirty-two cents, ten cents per pound, and
15 in addition thereto ten per centum ad valorem exceeding thirty-two cents per pound, twelve cents per pound, and in addition thereto ten per centum ad valorem." This act also contained a provision for the appraisal of goods, wares, merchandise, in accordance with the provisions of existing laws, and a further provision "that the duty shall not be assessed upon an amount less than the invoice or entered value, any law of Congress to the contrary notwithstanding." 13th Sta. at Large, 217, sec. 7.

The act of 1865, March 3d, entitled "An act amendatory of certain acts imposing duties upon foreign importations," did not change the grade or rate per pound at which wool was to be taxed, but provided "that in all cases where there is or shall be imposed any ad valorem rate of duty on any goods, wares, or merchandise, imported into the United States; and in all cases where the duty imposed by law shall be regulated by or directed to be estimated or based upon

the value of the square yard, or of any specific quantity or
16 parcel of such goods, wares, or merchandise, it shall be the duty of the collector, within whose district the same shall be imported or entered, to cause the actual value or wholesale price thereof, at the period of exportation to the United States, in the principal markets of the country, from which the same shall have been imported into the United States, to be appraised, and such appraised value shall be considered the value upon which duty shall be assessed;" "provided the duty shall not be assessed upon an amount less than the invoice or entered value, any act of Congress to the contrary notwithstanding." 13th St. at Large, 493, sec. 7.

The act of July 28th, 1866, entitled "An act to protect the revenue, and for other purposes," while altering the rates of duty on many other articles, did not change the rate of duty on wool further or otherwise than it provided, "that in determining the dutiable value of merchandise hereafter imported there shall be added to the cost, or to the actual wholesale price or general market value, at the time of exportation, in the principal markets of the country,
17 from whence the same shall have been imported into the United States, the cost of transportation, shipment, and transhipment, with all the expenses included from the place of growth, production, or manufacture, whether by land or water, to the vessel, in which shipment is made to the United States; the value of the sack, box, or covering of any kind in which such goods are contained; commission at the usual rates, but in no case less than two and a half per centum; brokerage, export duty, and all other actual or usual charges for putting up, preparing, and packing for transportation and shipment." All charges of a general nature to be distributed *pro rata* among all parts of the invoice. 14 St. at Large, 330, sec. 9. But "the duty in no case to be assessed upon an amount less than the invoice or entered value."

From these provisions of the act of 1866 "long combing or carpet wools costing twelve cents or less per pound, unless the charges so added should carry the cost above twelve cents per pound, in
18 which case one cent per pound should be added," were expressly excluded, showing quite clearly that other kinds of unmanufactured wools were included. *Expressio unius est exclusio alterius.*

This act of 1866 did not repeal the act of 1865, only so far as it was inconsistent therewith, and it did not change or alter the duty of the appraiser or collector in regard to imported goods, as provided and expressed in sec. 7 of the act of 1865, further than to add costs and charges of various kinds to the wholesale price of the goods in the principal markets of the country from which the same shall have been imported into the United States.

The act of March 2d, 1867, 14 Sts. at Large, 559, entitled "An act to provide increased revenue from imported wool, and for other purposes," provided for a classification of wools into "clothing wool," "combing wools," and "carpet and other similar wools." These classes were again divided, each into two grades. The class to
19 which any imported wool belonged was to be determined by samples prepared under the direction of the Secretary of

the Treasury, and deposited in the custom-houses and elsewhere; the grade of the wool, in its particular class, by the value at the last port or place whence it is exported to the United States, excluding charges in such port.

This act contained no words repealing any former act, except the expression "in lieu of the duties now imposed by law" there shall be levied, &c., certain other rates of duty on various articles, among which was wool, as above stated.

The act of June 6th, 1872, 17 St. at Large, 230, reduced these rates of duty on wool ten per centum.

With the law as provided and enacted in these several statutes the plaintiff, in August, 1873, imported into Boston from Rosario, by the bark "Velox," 324 bales of unwashed Cordova wool, and entered it in bond. The entry was accompanied by the invoice of the wool, showing the cost of the wool and the charges thereon separately.

The wool was purchased March 2d, 1873, and cost more
20 than twelve cents per pound; it was shipped on the 5th of June following. On the 10th of the same June, Thomas B. Wood, acting consul of the United States at Rosario, made the following certificate on the invoice:

"U. S. CONSULATE, *June 10th*, 1873.

I, Thomas B. Wood, acting U. S. consul for Rosario, do hereby certify, after investigation, that the market value of unwashed Cordova wool at this place, at the date of the shipment of the annexed invoice, was thirty-two to thirty-two and one-half Bolivia reals, equivalent to 24.38 to 24.76 reals fuerta per arroba net weight.

"Given under my hand and seal this day.

"THOMAS B. WOOD,
"*Acting U. S. Consul.*"

Which, being reduced to United States weight and currency, shows a value at Rosario less than twelve cents per pound.

When this entry came before the appraiser for examination and appraisal he appraised the wool at the invoice price; that is, more than twelve cents per pound. With this appraisement the
21 plaintiff was dissatisfied, claiming, as appears by his protest, that the wool was of value less than twelve cents per pound, at the last port whence exported to the United States, at the date of exportation; that the "*the* acting United States consul so certified in the invoice." But he claimed no appeal therefrom to the merchant appraisers. The defendant, collector of customs, assessed and exacted of the plaintiff a duty of six cents per pound, less ten per centum. The plaintiff claimed that a duty of three cents per pound, less ten per centum, should have been laid upon the wool, and paid the extra three cents under protest.

The question then is: Was the defendant right in exacting a duty of six cents per pound, less ten per centum, upon the wool, instead of three cents per pound, less ten per centum?

It cannot be questioned that it was the duty of the collector, when this wool was entered, to cause it to be appraised. He was required

to do so by the act of March 3d, 1865, sec. 7 (13 St. at Large, 493), and he could not otherwise determine the duty to be levied
22 per pound on the wool, which was to be determined, whether three or six cents, by its value. The appraiser appraised the wool as required, and fixed its value at the invoice value. It was suggested in the argument that the invoice "value" might have included charges upon the wool at the port of exportation, as well as the price paid or value of the wool. But the presumption is, in the absence of any testimony on the point, as the invoice contained the amount and cost of the wool separate from the charges, that the appraiser did not include the charges in the "invoice value" of the wool, but excluded them, as required by law.

With this appraiser the plaintiff was dissatisfied, and he complained, as appears by his protest, that the value of the wool was less than twelve cents per pound, as certified by the U. S. consul on the invoice, and that the appraiser had not appraised, determined, and reported the true market value of the wool at the date and place of exportation. But he claimed no appeal to the mer-
23 chant appraisers to correct the appraisal. The value of the wool at the last port whence exported to the United States, excluding charges in such port, was a matter of fact, and upon it the appraisal was conclusive if no appeal was taken. The act of March 3d, 1865, sec. 7, 13 Sts. at Large, 493, required the collector to assess the duty upon it. "Such appraised value shall be considered the value upon which duty shall be assessed" is the language of the statute. Iasigi *et al. v.* Collector, 1 Wall., 375; Tappan *v.* United States, 2 Mason, 404; Rankin *et al. v.* Hoyt, 4 How., 327.

In Bartlett *v.* Kane, 16th How., 372, the court say: "The appraisers are appointed with powers, by all reasonable ways and means, to ascertain, estimate, and appraise the true and actual market value and wholesale price of the importation. The exercise of these powers involve knowledge, judgment, and discretion, and in the event that the result should prove unsatisfactory, a mode of correction is provided by the act. It is a general principle that when power or jurisdiction is delegated to any public officer or tribunal over
24 a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject-matter." "The interposition of the courts in the appraisement of importations would involve the collection of the revenue in inextricable confusion and embarrassment."

In Rankin *v.* Hoyt, 4 How., 327, it was held the duty of the collector to be guided by the appraisement, and a subsequent verdict of a jury, finding that the value of the wool was under eight cents per pound, cannot be considered as rendering his acts illegal.

So in this case the subsequent statement in the agreed case that wool fell at Rosario between the time of the purchase of the wool and the time of exportation, and that at the time and place of shipment the market value, excluding charges in such port, was less than twelve cents per pound, cannot affect the importation of the duty by the collector in accordance with the appraisal. See, also,

Belcher *et al.*, plaintiffs in error, *v.* Linn, 24 How., 508; Schmaire *v.* Maxwell, 3d Bl. C. C., 408.

25 The plaintiff contends in this case that the appraisal was not legal or sufficient; nevertheless it was an actual appraisement, free from fraud, and in the exercise of the appraiser's best judgment and discretion, and the remedy was by an appeal. These considerations dispose of the "first," "second," "third," and "fifth" grounds of the plaintiff's protest, and of the case. But there remains the "fourth" ground of protest, and as the case has been argued at length on that ground by the counsel for the plaintiff, it may be well that the court should state its conclusion upon that also.

The "fourth" ground of protest by the plaintiff is thus: "The proviso of sec. 7 of the act of March 3rd, 1865, that the duty shall not be assessed upon an amount less than the invoice or entered value, does not apply to this import. The act of March 2, 1867, in express terms repeals all prior laws imposing duty on wools, and makes new classifications, based on blood of sheep, and the

26 rate of duty is fixed by the value at the last port of exportation, and exclusive of charges in such port." Now, it is quite true that the act of March 2d, 1867, above referred to, did provide that, "in lieu of the duties now imposed by law on the articles mentioned and embraced in this section (sec. 1 of the act), there shall be levied, collected, and paid on all unmanufactured wool, hair of the Alpaca goat, and other like animals imported from foreign countries, the duties hereinafter provided." But it should be kept in mind that the proviso of sec. 7 of the act of 1865, that the duty shall not be assessed upon an amount less than the invoice or entered value, did not refer specifically to importations of wool, nor was it enacted in reference thereto alone, but it applied to "all cases where the duty imposed by law shall be regulated by, or directed to be estimated, or based upon the value of the square yard, or any specified quantity or parcel of such goods, wares, or merchandise," and is not repealed by any provision of the act of 1867. Indeed, it

27 would seem to be directly applicable to the provision of the act of 1867, in regard to wool, in this, that the rate of duty in each of the grades of wool in the several classes is determined by the value of the wool at the time and place of exportation, exclusive of the charges of the port. "But," then adds the proviso, "the duty shall not be assessed upon an amount less than the invoice or entered value, any act of Congress to the contrary notwithstanding." This view of the statutes of 1865 and 1867 is much strengthened by an examination of the act of 1864, June 30th, entitled an "Act to increase duties on imports, and for other purposes."

The 4th sec. of the act (13th Stats. at Large, 206) imposes a duty on wool, of the description of the wool in controversy, almost precisely the same as the duty in this case, to wit, "on all wool, unmanufactured, and all hair of the alpaca goat and other like animals, the value whereof at the last port or place from whence

28 exported to the United States, exclusive of charges in such ports, shall be twelve cents or less per pound, three cents per

pound; exceeding twelve cents, and not exceeding twenty-five cents per pound, six cents per pound."

Then in the 23d sec., providing for the appraisement of goods, wares, and merchandise, follows the proviso "that the duty shall not be assessed upon an amount less than the invoice or entered value, any law of Congress to the contrary notwithstanding."

The case of Kimball *v.* Collector, 10 Wall., 436, is in point. That case in some of its features closely resembles the one under consideration. The question was whether the value of the wool was more than 20 cents per pound, or 20 cents or less. If valued at more than 20 cents per pound, the wool was liable to duty; if at 20 cents per pound or less, it was free of duty. The invoice value of the wool when bought was more than 20 cents per pound, but before it was shipped the price of wool had fallen, and at the date of shipment it
29 was less than 20 cents per pound. The court held the invoice value must govern, and that the appraisers could not go below it. If the invoice value was the lowest value at which the goods could be appraised in deciding whether they were liable to duty or not, it is difficult to see why the invoice value is not to be held to be the lowest value at which the merchandise can be appraised in determining whether the duty should be six cents or three cents; the rate of duty per pound depending on the value of the merchandise per pound.

It is objected that in the case of Kimball *v.* The Collector, the duty was ad valorem, and in the case under consideration specific. But the amount of the specific duty depended on the value of the goods, just as in the case of Kimball against the collector it depended on the value of the goods, whether the duty should be 24 per cent. ad valorem or nothing. Further, the act of March 1, 1823, 3d Sts. at Large, 737, sec. 23: "That when any goods,
30 wares, or merchandise shall be admitted to an entry upon invoice, the collector of the port in which the same are entered shall certify the same under his official seal; and no other evidence of the value of such goods, wares, or merchandise shall be admitted on the part of the owner or owners thereof in any court of the United States, except in corroboration of such entry," confirms the opinion of the court that judgment should be for the defendant on all the grounds of protest.

31 UNITED STATES OF AMERICA, }
Massachusetts District, } *ss:*

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record, and also of the opinion of the court, and of all proceedings had in the cause of The Saxonville Mills *v.* Thomas Russell, in said circuit court determined.

In testimony whereof, I hereunto set my hand and affix the seal of said circuit court at Boston, in said district, this twenty-second day of September, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

[SEAL.] JOHN G. STETSON, *Clerk.*

32 *Bond on Writ of Error.*

Know all men by these presents, that we, The Saxonville Mills, a corporation under the laws of the Commonwealth of Massachusetts, and having its principal place of business at Boston, in said Commonwealth, as principals, and L. Waldo Smith, as surety, are held and firmly bound unto Thomas Russell, late collector of customs for the revenue district of Boston and Charlestown, in the full and just sum of three hundred dollars, to be paid to the said Thomas Russell, his certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the second day of January, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately at a circuit court of the United States within and for the district of Massachusetts, in a suit depending in said court between said Saxonville Mills, plaintiffs, and said Thomas Russell, defendant, judgment was rendered against the said plaintiffs, and the said plaintiffs having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such that if the said plaintiffs shall prosecute their said writ of error to effect and answer all damages and costs, if they fail to make their said plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

M. H. SIMPSON, [L. S.]
Pres't Saxonville Mills.
L. WALDO SMITH. [L. S.]

Signed, sealed, and delivered in presence of—
SAMUEL P. TENNEY.

Approved:
T. L. NELSON,
U. S. Dist. Judge.

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:
JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

33 The United States of America to Thomas Russell, late collector of customs for the revenue district of Boston and Charlestown, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on

the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States within and for the district of Massachusetts, wherein The Saxonville Mills, a corporation under the laws of the Commonwealth of Massachusetts, and having its principal place of business at Boston, in said district, plaintiffs, plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John Lowell, circuit judge of the United States for first circuit, this second day of January, in the year of our Lord one thousand eight hundred and eighty-two.

JOHN LOWELL.
Circuit Judge.

34 Due and sufficient service of the within citation is acknowledged.

[SEAL.] GEORGE P. SANGER,
U. S. Att'y.

[Endorsed:] Citation.

Endorsed on cover: Massachusetts C. C. U. S. No. 350. The Saxonville Mills, plaintiff in error, *vs.* Thomas Russell, late collector of customs. Filed 9th October, 1882.

RECEIVED
NOV 13 1885
JAMES H. McKENNEY
CLERK

BRIEF FOR PLAINTIFF

AND SYNOPSIS OF ARGUMENT.

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 81.

THE SAXONVILLE MILLS,

PLAINTIFF IN ERROR,

v.

THOMAS RUSSELL,

LATE COLLECTOR OF CUSTOMS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

CHAS. LEVI WOODBURY,
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STATEMENT.

The plaintiff in error, in August, 1873, imported into Boston from Rosario, by the bark "Velox," three hundred and twenty-four bales of unwashed Cordova wool, and entered it in bond. The import was "wool, Class 3," as defined in § 1, 1867. The collector exacted a duty of six cents a pound, less ten per cent; the importer claimed it was only liable to three cents a pound duty, less ten per cent, duly appealed to the Secretary of the Treasury, who affirmed the decision of the collector; and in due time and conformity to the law, the importer brought this action to recover the excess paid beyond the three cents per pound, less ten per cent. The agreed statement of facts in the record is referred to for details.

The main issue presented is that the wool act of 1867, § 1, repealed the previous duties imposed by law, and created wool, Class 3, and imposed on it a duty of six cents per pound or of three cents per pound dependent exclusively as its "value at the last port whence exported to the United States, exclusive of charges in said port," at the date of exportation, should exceed twelve cents per pound, or should be twelve cents or less per pound; but on this import, the appraiser reported to the collector that it was "wool, Class 3, dutiable at invoice value, six cents per pound less ten per cent." He was of opinion that it was not dutiable by its value at the last port, excluding charges in such port, but under a proviso in the Act of 1865, § 7, and the Act of 1866, § 9, "that the duty in no case shall be assessed upon an amount less than the invoice or entry value," it was dutiable at the amount of the invoice value. The classification of wool made in 1867 did not exist in 1865 or 1866.

It is agreed (fol. 10) that the wool was bought at Rosario, March 28, 1873, and was shipped for Boston, June 5, 1873; that it cost as per invoice more than twelve cents per pound, but that after the date of purchase and of shipment, the market value at this last port fell, and, at the date of shipment for Boston, the market value of this import was less than twelve cents per pound; and (fol. 11) that the appraiser made his report, believing he had no legal right to report other than the invoice value, although he believed the true market value of the import of Rosario, on the day of shipment, was less than twelve cents per pound. The plaintiff contended this was not a legal appraisement. It was also agreed (fol. 11) that the collector assessed the duty of six cents per pound less ten per cent on this import, because he believed that the value at Rosario, excluding charges in said port, was unimportant, inasmuch as the invoice

items showed an amount to shipboard which, being taken as the dutiable standard, showed an amount more than twelve cents per pound; and he believed the import liable to duty on the invoice value per pound.

In the Circuit Court, the judge was of the opinion that the report of the appraiser to the collector, "wool, Class 3, dutiable at invoice value, six cents per pound, less ten per cent," should be construed that he had reported the value at the last port, excluding charges in said port, and not as his legal opinion, that the duty should be assessed by the invoice value.

To this end, he refused to consider that part of the agreed statement (fols. 10 and 11) which admit the appraiser and the collector acted on their view of the law applicable to the circumstances, and without any controversy of fact with the importer.

His Honor further held, on his view of the facts, that the plaintiff should have appealed to merchant appraisers.

His Honor also held that the collector, legally, could assess the duty imposed by the Act of 1867 upon the amount of the invoice or entered value of the import, as the lowest value at which the merchandise could be appraised for the purpose of the Act of 1867. (See folio 25 *et seq.*)

ASSIGNMENT OF ERRORS.

1. The learned judge erred in giving judgment for the defendant on the agreed facts before him.

2. In not giving judgment for the plaintiff on the facts agreed before him.

3. In holding that the collector assessed the lawful duty on wool, Class 3, under the Act of 1867, on the facts in this case agreed.

4. In holding that wool, Class 3, of the Act of 1867, was liable to a duty on the amount of its invoice or entry value.

5. In omitting to consider the agreed statement of fact, "that the appraiser made said report to the collector, believing he had no legal right to appraise the wool at less than the invoice value, although in fact he believed the true market value of said wool at the last port whence exported to the United States, excluding charges thereat, was less than twelve cents per pound," at the date of shipment.

6. In holding that the report of the appraiser declared to the collector and intended to declare the value of the import at the last port whence imported, excluding charges in said port, had been appraised and ascertained to be over twelve cents per pound; and that it did not intend to declare that he believed or was of the opinion the duty should be levied by law on the invoice value, and he believed the rule of 1867, defining the taxable value, inapplicable, because of the proviso of 1866.

7. In deciding the merchant appraisers could lawfully entertain an appeal from so much of the appraiser's report to the collector,

made pursuant to § 328, Treasury Regulations 1857, for the information of the collector and naval officer of his opinion of the schedules, and class the merchandise falls under for dutiable purposes.

8. In deciding that the collecter assessed the duty on this import on the value at the last port whence exported to the United States, excluding charges in said port.

ERRORS 1 and 2 will be considered in connection with the following specifications:—

ERROR 3.—It is the collector's province to assess the duty on merchandise. Act 1864, § 14; repeated in Revised Statutes, § 2,931.

He did assess a duty on the invoice value of the merchandise. The law was before him, and the statement of facts shows (fol. 11) he waived seeking for the appraisement prescribed by the Act of 1867, and assessed by the earlier proviso, because he believed that proviso controlled the case. The appraiser, it is true, may by virtue of Treasury Regulations, § 328 of 1857, report his opinion of the rate of duty which the collector should impose, but that is not conclusive. This power is not granted in any statute, and is ordered by the Treasury as mere advice. The decision is the collector's province, § 2,931, Rev. Stat., § 14 of 1864, and the agreed statement and the judge's opinion show the collector intended to rule the value named in the Act of 1867 was not applicable, under the facts, to this import. From his decision, plaintiff protested, and duly appealed to the Treasury Department.

His Honor below misunderstood the point of the protest, which (fol. 23) he assumes was that the value at the last port had been incorrectly appraised. The point, his own statement shows, was that the appraiser had not reported at all on that value to the collector, but had reported that it was by law in his opinion dutiable by the amount of the invoice value; which invoice the importer swore to, and which by law was of the amount of the cost and charges to shipboard, and which invoice contained no declaration of the value at the period of exportation in the last port, excluding charges thereat.

The amount of the invoice value was a mere computation, not an appraisement of market values, and the appraiser had no authority to determine it.

Goddard v. *Arthur*, 96 *U. S.* 146.

The collector did not levy, because he thought the appraiser had reported the market value in last port, excluding charges thereat, as the judge erroneously assumed. Nor did the plaintiff's protest assume the appraiser had reported the value at last port to the collector.

There was nothing for merchant appraisers in this advice to the

collector on the law. If the appraiser and collector were right in their law, there was nothing to be appraised at all.

Kimball v. *Collector*, 10 *Wal.* 453.

ERROR 4. — In deciding that wool, Class 3, Act of 1867, was liable to a duty on the amount of the invoice value of the merchandise.

THE PROVISO CONSTRUED.

Briefly, as preliminary, it should be stated that,

Until 1846, duties were levied on the amount of the invoice, with certain statute additions, as of the time of purchase of the goods.

In 1846, the market value of the import in the principal markets of the country whence exported, at the time of purchase, was adopted as the dutiable *ad valorem* standard. A right to add to the invoice in the entry was granted for the first time, coupled with a proviso that the duty should not be assessed on an amount less than the invoice value.

In 1857, "less than the entry value" was added.

This *ad valorem* right to add, with its restriction, is repeated in 1865, § 7, 1866, § 9; but neither in these sections, nor anywhere, has a statute coupled this proviso to a clause defining how grade shall be determined. It is submitted it never applied to restrict a definition for ascertaining grade; and whether or not this is so, it is contended that the Act of 1867 is inconsistent with and repugnant thereto, and the proviso is inapplicable to so much of the statute as relates to wool, Class 3.

The first step toward our conclusions is to define what the proviso refers to as "the amount of the invoice or entering value." The next is to show its internal incongruity and inconsistency with the legislation of 1867, and the repugnancy of that statute.

STATUTES.

The proviso is found in special connection in the Acts of 1865, § 7, and 1866, § 9, on which I shall comment at a further stage.

I will now show what the statutes have enacted shall enter into the amount of the invoice or entered value; that being understood, intelligent comparison of the proviso on the issues here will be facilitated.

The Invoice Value. — Statutes Defining.

Act 1799, § 36, Stat. at L., 655. Importer shall produce the original invoice, and make oath it is the true and genuine invoice, etc.

1823, § 54. Oath to the entry by owner, "that the invoice I now produce contains a just and faithful account of the actual cost of said goods, wares and merchandise, of all charges thereon, including

charges of purchasing, carriages, bleaching, dyeing, dressing, finishing, putting up and packing, and no other discount, drawback or bounty, but such as has been actually allowed on the same," etc.

1823, § 7, requires an oath also "that the invoice now produced by me exhibits the actual cost . . . at the time or times, and place or places, when and where procured, of the said goods, wares and merchandise, all the charges thereon, and no other or different discount, bounty or drawback, but such as has been actually allowed on the same."

§ 7 requires the oath to the above facts of a non-resident owner.

1863, § 1, 12 Stat., 737. All invoices of merchandise imported from any foreign country into the United States shall be made in triplicate, etc., at or before the shipment, and shall have indorsed thereon a declaration signed, etc., that it contains (if the goods, wares or merchandise were subject to *ad valorem* duty, and were obtained by purchase) a true and full statement of the time when and the place where procured or manufactured, and the actual cost thereof, and of all charges thereon; and that no discounts, bounties or drawbacks are contained in said invoice, but such as have actually been allowed thereon.

. . . . . .

And no goods, wares or merchandise imported into the United States, from any foreign country or place, shall be admitted to an entry unless the invoice presented shall in all respects conform to the requirements hereinbefore mentioned, etc., . . . nor unless said invoice be verified at the time of making the entry by the oath or affirmation of the owner, consignee, etc.

The Entry.

1799, § 36, 1 Stat. at L., p. 655. Shall contain a just and true account of the prime cost and all charges, verified by oath.

1823, § 4, 3 Stat. at L., 732. Owner's oath is that "the invoice I now produce contains a just and true account of said goods, and all charges thereon, including," etc. § 5 directed the duty to be estimated on the cost and charges, added to a per cent on "the aggregate amount" of the cost and charges. § 13 levied a penalty of fifty per cent on such aggregate.

1842, 5 Stat. at L., p. 563, § 16. The dutiable point was the home market, including all costs and charges and commissions.

1846, 9 Stat. at L., 43. Market value in the principal markets of the country whence exported at time of purchase was adopted as the dutiable standard with all costs and charges. § 8 authorized for the first time additions to the value given in the invoice to be made in the entry to raise the same to the value in the principal markets, etc., and after penalties, declared "the duty shall not be assessed on *an amount less than the invoice value*."

This was purely an *ad valorem* tariff. In 1851 the entry was made to relate to the dutiable value at the time of exportation. The invoice had to extend to the same time.

1857, § 2, amended the Act of 1846, § 8, by enlarging the cases where additions to the entry could be made, with penalties for undervalue, coupled with the proviso that the duty should not be assessed on an amount less than the invoice or *entered value*. This is the first appearance of *entered value* in the proviso. The "amount" is the aggregate amount.

In 1851, the entry value was made to relate to the time of exportation; and in 1861, § 28, when the duty shall be levied on the market value of such imports in the principal markets of the country, or at the port of exportation, the duty shall be estimated and collected upon the value *on the day* of actual shipment.

1866, § 9, requires all costs, charges and expenses to be added in determining the dutiable value, and says, § 2904, "all additions made to the entered value for charges, shall be part of *the actual value* of the merchandise," etc.

Thus the invoice must state the costs and all actual charges and expenses to shipboard, or be liable to the penalties imposed on a false invoice. The entry must state this, and also additions for declaring the market value and charges required by law, under heavy penalties. The *amount of these* footings is a matter of arithmetic.

The "Amount of the Invoice and Entry Value" Construed.

It may be suggested by the defence, that the words "amount of the invoice or entered value" do not mean their respective total footings, but can be construed to refer to some less amount, as merely the market value or the original cost at time of purchase, excluding the charges, expenses and additions which the law requires to be embraced in these documents respectively.

There is nothing in it.

Goddard *v.* Arthur, 96 U. S. 147, the Court says, "The invoice or entered value spoken of in the statute means the value as it is stated in or upon the invoice." This arose on the invoice value.

The statute of 1867, § 1, 14 *Stat. at L. p.* 559, *so far as it relates to the import in issue, wool, Class* 3, *prescribes the mode of ascertaining the duty.*

§ 1: "From and after the passage of this Act, *in lieu of* the duties now imposed by law on the articles mentioned and embraced in this section, there shall be levied, collected and paid on all unmanufactured wool, hair of the alpaca goat and other like animals imported from foreign countries, the duties hereinafter provided: All wool, etc., as aforesaid, shall be divided, for the purpose of fixing the duties to be charged thereon, into three classes, to wit

(Class 1, clothing wool; Class 2, combing wool), Class 3, carpet wools, and other similar wools, such as Donshoi, native South American, Cordova, etc." . . . . (that samples shall be furnished the custom houses to judge by). "Upon wools of the third class, the value whereof at the last port or place whence exported to the United States, excluding charges in such port, shall be twelve cents or less per pound, the duty shall be three cents per pound: upon wools of the same class, the value whereof at the last port or place whence exported to the United States, excluding charges in such port, shall exceed twelve cents a pound, the duties shall be six cents per pound."

The Act of 1867 gives the exclusive and only rule for ascertaining wool, Class 3, created by that statute, and for assessing a duty upon it.

This class is to be ascertained by the blood of the sheep and by certain samples furnished by the department; when the class is found, the import is divided into two grades of duty by the value at the last port at the period of exportation, excluding charges in said port, twelve cents or less per pound,—the duty is three cents a pound; by the same standard over twelve cents, six cents per pound. The period of exportation then was and now is the time of shipment, R. S. § 2904.

This standard is not "the market value in the principal markets of the country whence exported at the time of shipment," as required for general *ad valorem* dutiable purposes. Nor is it "the invoice value," which by law includes prime cost and all further cost, expenses and charges incurred upon the import to shipboard.

Congress has chosen a standard for the rate of this duty which is not found in the entry or the invoice of the importer; one which the appraiser must obtain from other sources of information, and for which the books, accounts or opinions of the importer are not asked to contribute any fact but the day of shipment. The assumption of any other than the single standard of 1867 violates and overthrows that Act.

I shall endeavor to show the repugnancy of the Wool Act to the proviso in 1865 and 6, on the invoice and entry value.

The principles for the construction of statutes are plain.

This Court held, Arthur *v.* Rheins, 96 U. S. 144, that the specific description overrides general language in another statute which otherwise would include the subject, and is to be enforced.

In Davies *v.* Fairbairn, 3 Howd. 636, it is said correctly, page 645, "If the later statute clearly intended to prescribe the only mode by which real estate should be conveyed, it repeals the prior act."

The plaintiff in error claims that this Act of 1867 clearly intended to prescribe the only mode by which a duty should be levied on wool, Class 3, and offers abundant evidence of the intent to repeal *pro tanto* all that conflicts therewith.

The distinctions from other prior statutes are plain; whilst on the entry the appraisers find the value in the principal markets of the country whence exported to the United States; whilst the invoice gives the cost at time and place of purchase, and subsequently, together with all charges to shipboard; this rule of 1867 adopts neither of these forms for grade purpose on wool, Class 3, but takes the value at the last port, excluding charges thereat, at the time of shipment. To this rule, neither the amount of the invoice nor the entry can conform, because elements required by law to enter into these documents are excluded for the grade purpose of 1867, and because the value at the last port excluding charges thereat is not given nor allowed to be given by the importer, either in his invoice or his entry. The statute shows further evidence of an intentional departure from the preceding laws more extensive than a mere change of the rate of duty. It made a new grade, and new rates of duty depending on novel criterions. The entire old system of wool duties was abolished, and a novel system was created. The rule is admitted which is laid down in Stuart *v.* Maxwell, 16 Howd. 161, that as revenue acts are all *in pari materia*, we are to observe whether the general scope of the new statute is repugnant to prior laws, and whether there is repugnancy in its particular phraseology.

Tested by this rule, the entire statute confirms the position of the plaintiff.

Congress in 1846-1857, made limitations to the market value and entry addition mode of ascertaining the duties. In 1867 it refused to subject wool, Class 3, to any *ad valorem* duty whatever, and levied on it specific duties. Whilst in 1846 it made the value in the principal markets of the country whence exported with charges, etc., the measure of dutiable value. In 1867 for wool, Class 3, it excludes those principal markets from being considered in obtaining the dutiable value, and directs the value in a single port to be ascertained. Whilst charges innumerable by law are made to enter into the entry and invoice value, and into that of the general dutiable value by various Acts from 1846 to 1856, this Act of 1867 excludes charges at last port from entering into the value at that port for grade purposes.

Repugnancies like these are further enforced by the opening clause of the Act of 1867.

"In lieu of the duties now imposed by law on the articles mentioned and embraced in this section, there shall be levied, collected and paid on all manufactured wool, etc., the duties hereinafter provided."

The entirely unprecedented division by blood into classes, with the fact that duties differ on wools of the same value which belong to different classes, furthers the conviction that Congress meant this Act should be the exclusive rule for the duties to be imposed on

wool, Class 3. This intention, of course, causes collision with former laws: but it is the last will which must prevail, and the very conflicts show the intention of the last law was to repeal and not to harmonize with the earlier ways. So strongly was Congress impressed they were *repealing* earlier laws, that it re-enacted the old provisions against fraud in wool.

The Relevancy of the Proviso to the Act of 1867, *Wool, Class* 3, *considered.*

The proviso by which the collector levied the duty is found in the Acts of 1865, § 7, 1866, § 9, in the same section with the grade law of each, but in different context.

1865, § 7 (13 Stat. at L., p. 499).—"That in all cases where there is or shall be imposed any *ad valorem* duty on any goods, wares, or merchandise imported into the United States, and in all cases where the duty imposed by law shall be regulated by, or directed to be estimated or based upon the value of the square yard, or any specified quantity or parcel of such goods, wares, or merchandise, it shall be the duty of the collector within whose district the same shall be imported or entered, to cause the actual market value or wholesale price thereof, at the period of exportation, in the principal markets of the country from which the same shall have been imported into the United States, to be appraised, and such appraised value shall be considered the value upon which the duty shall be assessed," etc.

The following part of section 7 appears to concern a different subject, and has the proviso. It repeats the language of 1846, that the importer may add to his entry: and if such appraised value shall exceed by ten per cent the value so declared in the entry, levies a penalty, with the proviso "that the duty shall not be assessed on an amount less than the invoice or entered value."

But there is a "provided, further" in the section, which is diametrically opposite, viz., that all acts and parts of acts requiring duties to be assessed upon commissions, brokerage, costs of transportation, shipment, transhipment, and other like costs and charges, incurred in placing any goods, wares or merchandise on shipboard, and all Acts inconsistent with the provisions of this Act, are repealed.

(14 Stat. L., p. 330.)

1866, Sect. 9.—"And be it further enacted, that in determining the dutiable value of merchandise hereafter imported, there shall be added to the cost or the actual wholesale price or general market value at the time of exportation in the principal markets of the country from whence the same shall be imported into the United States, the cost of transportation, shipment and transhipment, with all the expenses included, from the place of growth, production or manufacture, whether by land or water, to the vessel in which ship-

ment is made, to the United States; the value of the rack, box, or covering of any kind in which such goods are contained; commission at the usual rates, but in no case less than two and a half per cent; brokerage, export duty, and all other actual or usual charges for putting up, preparing and packing for transportation or shipment. And all charges of general character incurred in the purchase of a general invoice shall be distributed, *pro rata*, among all parts of such invoice, and every part thereof charged with duties based on value shall be advanced according to its proportion, and all wines or other articles paying specific duty by grades, shall be graded, and pay duty according to the actual value so determined: *Provided*, That all additions made to the entered value of merchandise for charges shall be regarded as a part of the actual value of such merchandise, and if such additions shall exceed by ten per cent the value so declared in the entry in addition to the duties imposed by law, there shall be levied, collected, and paid a duty of twenty per cent on such value; *Provided*, That the duty shall in no case be assessed upon an amount less than the invoice or entered value: *Provided further*, That nothing herein contained shall apply to long-combing or carpet woods costing twelve cents or less per pound, unless the charges so added shall carry the cost above twelve cents per pound, in which case, one cent per pound duty shall be added."

The proviso is not a general commercial regulation. It is applicable to *ad valorem* on principal market value. In 1823 duties were levied on the costs and charges of imports, with an addition of twenty per cent. Minimums or grade goods duties began in 1824, and until 1846 there was no proviso that grade should be levied by the invoice. On the contrary, the appraisement per grade was directed to be, "any invoice or affidavit to the contrary notwithstanding": 1846 to 1857, no grade levy was found in the tariff. In 1857, with the right to raise the entry to the market value of *ad valorem* goods was coupled a proviso that the duty shall not be assessed on "an *amount* less than the invoice or entered value, which shows that Congress was then *taxing* by the *declaration* of the importer in his invoice and entry. In 1857 a proviso was inserted (Kimball *v.* Collector, 10 Wal.) shows the duty *ad valorem* was levied on it, in a grade case, because the proviso was the last law, and the rate was on the amount of value.

In 1857 there was no special rule for ascertaining the grade; the market value applied alike to it and to the dutiable value.

1865 again has the proviso, which in the prior Acts of 1846 and 1857 was on *ad valorem* goods only. § 5 gave a special rule for finding grade, which was the first specific legislation on it; but attached to a clause authorizing additions to the entry by the importer, is this proviso holding him subject to taxation on the *amount* of invoice or entry value declared by him.

I do not think it applied to grading at all, because all the ele-

ments which make up invoice values are distinctly rejected for grade purposes by § 5, and are incompatible with it. The specific expression excludes general ones when they conflict in the same statute.

Arthur v. *Rheims*, 96 *U. S.* 144.

In 1866, a new rule for grading was introduced, and every element which by law entered into the invoice or entry value was directed to enter into grade value. There were several provisos appended; among them this one, connected as usual with the right to raise the entry value. I think it did not apply to the grade rule, but as originally only to dutiable value on *ad valorem* goods, both *per se*, and because grade specifically in § 9 described all the items which make up the invoice or entry value declared by the importer. Wool of low price was excluded from the scope of the section.

In less than a year the new wool tariff was considered, reported, and passed through Congress and enacted, which intended to except wool, Class 3, out from all questions under former tariffs, and put it on its own basis as to the duties; and the mode of ascertaining them prescribed was neither by the value in the principal markets, nor by the invoice, costs and charges, and other items, nor by the entry, nor even by the grade rules of 1865 or 1866.

Congress would have said that the new plan for grade was subject also to a levy on the invoice or entry value of the wool, had they intended it should be so. Congress knew when it made this grade rule for Class 3 it was excluding invoice elements and entry elements of dutiable value at the last port; and it intended the natural consequence that it had made a new and independent grade value for taxing this import which was to supersede all previous impositions of duties thereon; this it said both by the words "in lieu of" and by the entire context of its statute. It was not supposed by Congress that any one would attempt to make this prior proviso of a different system control a new special grade enactment with specific duties, whose expressed idea was distinctly contrary to its "amount" or the elements that formed it having anything to do with the new grade law for wool, Class 3.

In making the value at the last port, etc., the exclusive standard for a rate of duty, Congress must have meant to repeal the grade rules of 1865, § 7, 1866, § 9, so far as they applied to this import. What logic is there in holding that a proviso of dubious character in the section and equally inconsistent with the new law should survive and become a grade law whilst these perish? The quality of statutes is the same: one is no better than another, except that the last will of Congress must prevail.

The proviso gave in *ad valorem* duties an effect to the declarations of the importer, by way of estoppel on the facts he set out.

The declarations in his invoice and entry by the importer contribute no fact required by the Act of 1867 to determine grade value of

this Class 3. Neither of these documents can give the facts defined in 1867 as needful for that purpose. Oaths prevent it, and penalties. How can it be implied that Congress meant the importer should be taxed by his invoice value, when it says he shall be taxed by a standard concerning which he is excluded from making any declaration in the invoice or entry, a standard which in its own language excludes elements that are a component part of the amount of the invoice and entry value?

Confirmation of this conclusion is found in the Revised Statutes enacted after this importation. The compilers embodied § 9, 1866, except "the proviso," into §§ 2,907, 2,908, and go on in reconciling explanation, *provided further*, that this and the preceding section (2,907) shall not be considered as impairing the provisions relating to duties on the several classes of imported wool contained in § 2,504, Schedule L" (Act 1867).

The proviso of § 9 disappeared, and the grade laws of 1866 and 1867 are reconciled by the exclusion of the provisions of 1865 and 1866 from impairing those of 1867.

Should this honorable Court apply the same construction which Congress did in the codification, it will clearly appear the Act of 1867 was intended to supersede and nullify the proviso, so far as wool, Class 3, is concerned.

Kimball *v.* Collector, 10 Wal. 453, was cited as authority sustaining the collector in the court below. It has no analogy to this case. Kimball's case arose on the two statutes of March 3, 1857. One levied a duty *ad valorem* on wool whose value exceeded twenty cents per pound at the port of exportation; the next one provided the duty should not be assessed on an amount less than the invoice or entry value, which in the case was over twenty cents per pound. Was it free or dutiable?

The elements and incidents for the dutiable value and for the grade value were exactly the same. No existing law then defined how grade should be ascertained. The Court held, the general law, "which prohibits both the appraisers and the collector from making any reduction in the invoice or entered value in the assessment of *ad valorem* duties," applied, no statute was in conflict with it, or inharmonious with its requirement. It also was the last law.

At bar, this decision was misconstrued into an authority for overriding conflicting subsequent legislation prescribing a special way of ascertaining grade, repugnant to the proviso. This court, in Kimball's case, merely decided that the first Act of March 3, 1857 (11 Stat. at L., p. 195), was controlled by the second Act of the same date (do., p. 199), and gave force to the last law. The point that a valuation for grade is separate from one for dutiable value was made, and Treasury circulars directing them to be made separate were cited, and by appraisement acts to be ascertained, "any invoice or affidavit to the contrary notwithstanding." But the Court said nothing on the point, except that, as the last Act controlled, the appraise-

ers had no authority to make an appraisement for grade as they were requested to by the collector.

The Court were not asked to call the proviso a general commercial regulation: on the contrary, they ignored the proviso of 1846 and rested on that of 1857. There was no conflicting description in the law of how to ascertain the grade to be reconciled or declared repugnant. The Court limits its view to "the assessment of *ad valorem* duties" (p. 454).

It held *the last law* made a minimum value for the levy, but it neither held nor intimated that if earlier the proviso would control a later grade law. The implication is all that it would not, as far as any can be raised from the opinion of the Court. Congress intended the per pound valuation in its Act 1857 should be ascertained in the same way with its value for dutiable purposes *ad valorem;* and though the inquiries may have been distinct, the same answer would always apply to each of them.

In the issue at bar the Act of 1867 is the last and controlling law. There are no *ad valorem* duties levied on wool, Class 3, and no rate of duty imposed either on the market value or the entry value of the merchandise. A rule is prescribed taking a different market and value for ascertaining grade by which specific duties shall be levied, which is incompatible with either the invoice or entry value being the standard contemplated in the rule, or with any duty being levied on either the amount of the invoice or the entry. The whole enactment shows this rule of 1867 was meant to be an exclusive one.

ERRORS 5, 6 AND 7. — The learned judge (fols. 24 and 25) considers that the appraiser reported to the collector the value of the merchandise at the last port whence exported to the United States, excluding charges thereat. The facts do not justify this conclusion.

It is admitted and agreed (fol. 11) that after finding the wool was Class 3, the appraiser ascertained, but intentionally abstained from reporting, the value at last port, excluding charges, etc., because he believed he had no legal right to appraise and report the wool at less than the invoice value. The report (fol. 10) states: "Wool, Class 3, dutiable at invoice value, 6 cents per pound, less 10 per cent."

The judge failed to consider that by Treasury Regulations, § 328 of 1857 (and not by statute), the appraiser was required to report, as advice to the collector and naval officer, his opinion of the classification and rate of duty which the collector should levy on the import. The duty of classifying and assessing the rate is exclusively the collector's, § 2,931 R. S., Act 1864; and he is under no obligation to follow advice (96 U. S. 146). The controversy was with the collector's decision, wrongly applying the proviso to this import, as we say, and his not requiring a report on the value at last port from the appraiser. The agreed statement shows neither the appraiser nor the collector nor the importer understood the report

as referring to value in last port at all. If there is any ambiguity in that report, which there is not, this admission on record is competent to explain it. The appraiser refrained from reporting value at last port, because he understood Kimball's case (10 Wal.) excluded the right to appraise in cases where the proviso applied. There never arose any dispute as to what was the value in the last port, etc., and the judge erroneously assumed there was such an issue; and he disregarded that the appraiser had a duty of advice by regulation, independent of his statute power to appraise market values, or confused it with the statute powers of that officer.

The appraiser has no jurisdiction to ascertain the invoice value of merchandise.

Arthur v. *Goddard*, 96 *U. S.* 146.

The whole scope of the opinion of the Court, in discussing the fourth ground of the protest (folios 25, 26), shows that the issue made with the collector was that he had levied on the error that the proviso applied, and had not followed the statute of 1867. The proposition, folio 22, of the judge, is not sustained, and he misapprehends the protest point he there cites. It did not say that the appraiser had found a wrong market value at the last port, as the judge assumes; but it clearly is, on his own statement, that the appraiser had not reported on the true market value at last port at all, which involves the legal effect of not doing that which the importer contends he ought to have done. If the import was liable on the amount of the invoice and entry value, it was on the whole amount. If it was only liable on value at last port, excluding charges in such port, then it is admitted the lawful duty would have been 3 cents per pound, less ten per cent, and the plaintiff is entitled to recover back the excess which he paid.

The Court below cited, § 23, 1823, that the importer shall not contradict in court the truth of his invoice or entry value. We say neither of these documents apply to the grade levy on wool, Class 3, by the Act of 1867.

Error 8 was consequent on the misapprehension of the judge. Had the appraiser reported a market value, as the Act of 1867 designates, the importer would have submitted or appealed to merchant appraisers, as the law would then require; but the appraiser did not do this. On the contrary, he reported his opinion on the class rate of duty to the collector, who alone has jurisdiction to decide the class rate, and who is not limited to the opinion of the appraiser for his judgment. The merchant appraisers, neither by law or Treasury Regulation, have appelate jurisdiction on this subject.

It is respectfully submitted the judgment should be reversed.

CHARLES LEVI WOODBURY,
Counsel for Plaintiff in Error.

[illegible]

In the Supreme Court [illegible]

October Term, 1867

THE SAXONVILLE MILLS, PLAINTIFFS in error,
vs.
THOMAS RUSSELL, late Collector of [illegible]

No. 81.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE DEFENDANT IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

THE SAXONVILLE MILLS, PLAINTIFF in error,
vs.
THOMAS RUSSELL, LATE COLLECTOR OF customs.
} No. 81.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE DEFENDANT IN ERROR.

The plaintiff in error sued for duties claimed to have been illegally exacted from it by the defendant in error, as collector of customs for the revenue district of Boston and Charlestown, upon three hundred and twenty-four bales of unwashed Cordova wool.

The case was tried upon the general issue, and a case agreed (R. pp. 3–5).

The duty upon the importation in question is regulated by two statutes:

I. The act of 2d March, 1867 (14 Stat., pp. 55–59), en-

titled "An act to provide increased revenue from imported wool, and for other purposes," which enacts (section 1):

> That from and after the passage of this act, in lieu of the duties now imposed by law on the articles mentioned and embraced in this section, there shall be levied, collected, and paid on all unmanufactured wool, hair of the alpaca, goat, and other like animals imported from foreign countries the duties hereinafter provided. All wools, hair of the alpaca, goat, and other like animals, as aforesaid, shall be divided, for the purpose of fixing the duties to be charged thereon, into three classes, to wit:

It then proceeds to make the following classification: "Class 1. Clothing wool," specifying the kinds of wool embraced; "Class 2. Combing wool," specifying the kinds of wool embraced; and "Class 3. Carpet wools and other similar wools, such as Donskoi, native South American, Cordova, Valparaiso, native Smyrna, and including all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria, and elsewhere."

In levying the duty upon class 3, *which is the only head of the classification that enters into the case at bar*, the statute enacts that—

> Upon wools of the third class, the value whereof at the last port or place whence exported into the United States, excluding charges in such port, shall be 12 cents or less per pound, the duty shall be 3 cents per pound; upon wools of the same class, the value whereof at the last port or place whence exported to the United States, excluding charges in such port, shall exceed 12 cents per pound, the duty shall be 6 cents per pound.

II. The second statute involved in the case at bar is the act of 6th June, 1872 (17 Stat., p. 230), which provides, by its second section:

> That on and after the first day of August, eighteen hundred and seventy-two, in lieu of the duties imposed by law on the articles in this section enumerated, there shall be levied, collected, and paid on the goods, wares, and merchandise in this section enumerated and provided for, imported from foreign countries, ninety per centum of the several duties and rates of duty now imposed by law upon said articles severally, it being the intent of this section to reduce existing duties on said articles ten per centum of such duties, that is to say:
>
> * * * * * * *
>
> On all wools, hair of the alpaca, goat, and other animals, and all manufactures wholly or in part of wool or hair of the alpaca, and other like animals, except as hereinafter provided.

The duty exacted was at the rate of 6 cents a pound, less 10 per centum.

The appraiser inscribed on the invoice, for the collector's instruction, the following report: "Wool, class 3, dutiable at invoice value 6 cents per pound, less 10 per centum;" and returned the invoice to the collector (R., p. 4); and upon this appraisement the collector assessed and exacted the duty (R., p. 4).

It appeared by the invoice that the wool in question was bought in Rosario on the 28th March, 1873, and on the 5th June, 1873, shipped at that port for Boston on board the Velox (R., p. 3).

Rosario was the last port from whence the wool was

exported to the United States, and it was invoiced there and entered at the Boston custom-house at the price paid for it in the currency and at the weight in which it was bought, which, upon being reduced to United States currency and weight, showed the cost to be *above* 12 *cents a pound* (R., p. 3).

But between the time of purchase and the time of shipment and exportation to the United States the market value or wholesale price of wool of the grade of the wool in question fell at Rosario, so that at the time and place of shipment its market value or wholesale price was *less than* 12 *cents a pound*, excluding charges, in said place of shipment (R., p. 3).

But, notwithstanding this evidence of decline in price, the appraiser and collector held the wool dutiable on the invoice value at 6 cents per pound.

The plaintiff in error did not appeal from the appraisement, but, after paying under protest the alleged illegal excess of duty, did appeal from the collector's assessment to the Secretary of the Treasury, who affirmed the action of the collector.

Upon this state of facts judgment went for the defendant.

ARGUMENT IN REPLY.

The first question that arises is, whether the plaintiff is not concluded as to the value on which the assessment was based by his failure to appeal from the appraisement. The court below held that he was.

It will be remembered that the duty on wools of the third class depends on whether their value, at the last

port or place whence exported to the United States, was 12 cents or less per pound, or above that sum, excluding charges in such port or place. In the first case the wool is dutiable at 3 cents, less 10 per centum, and in the second at 6 cents, less 10 per centum.

To determine these two grades there must be a valuation. The collector, therefore, very properly called for an appraisement to enable him to assess the duties. The appraiser, as we have seen, reported the goods as dutiable at 6 cents per pound on the invoice value. From this appraisement there was no appeal.

It is said, however, by way of answer to the objection, that no appeal was taken from the appraisement, that there was no appraisement to appeal from, the action of the appraiser being no more than a statement of the conclusion of law that the merchandise was dutiable at the invoice value, wholly irrespective of its actual value at the last port of exportation.

But it cannot be admitted that there was no appraisement, because the report made by the appraiser by the entry on the invoice necessarily involved his determination and ascertainment that there was no undervaluation in the invoice to warrant the collector in assessing a penal duty. Here, then, was certainly a valuation or appraisement according to the actual facts of the case. Indeed, we are warranted in saying that what was done was an appraisement in the sense in which that term is used in the first section of the act of 1867, which provides that when the invoice embraces bales of wool of different qualities, and the average price falls more than 10 per cent. below the value of the bale of the best quality, "*the value*

of the whole shall be appraised according to the value of the bale of the best quality."

Now here is a mode of fixing a grade valuation which is as despotic and arbitrary as that furnished by the provisos of the acts of 1865 and 1866, and yet a valuation so determined *is an appraisement under the very act which, it is here contended, is wholly irreconcilable with the provisos of the previous laws making the invoice valuation the minimum valuation on which duties shall be assessed.*

Turning now to the case of Kimball *v.* The Collector (10 Wall., p. 436), we find an act undistinguishable from the act of the appraiser in this case, designated and treated by the court as an appraisement.

It is difficult to see why the plaintiff was discharged from the duty of taking an appeal from the act of the appraiser because of the character of that act. It would seem to have been sufficient that the act in question was prejudicial to the plaintiff to lay the foundation for an appeal. It is the duty of the appraiser to make the appraisement according to the law, and if he errs in law or fact it is by appeal that the error must be corrected. There is no reason, then, to conclude that because the first appraiser made a mistake of law or fact, it was useless to appeal.

The act of 30th August, 1842, section 17 (5 Stat., 548), regulating this subject, says:

> *Provided*, That if the importer, owner, agent, or consignee of any such goods shall be *dissatisfied* with the appraisement, and shall have complied with the foregoing requisitions, he may forthwith give notice to the collector, in writing, of such dissatisfac-

> tion; on the receipt of which, the collector shall select two discreet and experienced merchants, citizens of the United States, familiar with the character and value of the goods in question, to examine and appraise the same, agreeably to the foregoing provisions, and if they shall disagree, the collector shall decide between them; and the appraisement thus determined shall be final, and deemed and taken to be the true value of said goods; and the duties shall be levied thereon accordingly, any act of Congress to the contrary notwithstanding.

This law contains no recognition of the limitation of the right or duty of appealing from the appraisement that is contended for on the other side. The appeal, it is submitted, must either be taken or the importer remain foreclosed as to all right to contest the valuation on which the duty is assessed.

The law says that if the importer, owner, agent, or consignee of any such goods shall be "*dissatisfied*" with the appraisement he may appeal. The plaintiff was dissatisfied with the appraisement, and therefore should have appealed. Certainly that would have been his course if the appraiser had determined the valuation without any examination of the packages selected and sent to him by the collector for that purpose and without hearing any evidence, and yet, while that would have been no appraisement at all in the ordinary sense of the term, it must be conceded it would have amounted to one in the sense of the statute, to which effect must be given.

But supposing the plaintiff was not bound to appeal from the appraiser's valuation, for that the same was no

appraisement, but made regardless of actual facts and the result of a mere conclusion of law, and that it was the collector's province alone to determine any question of law that entered into the assessment of duties, it is still maintained that the collector's assessment of 6 cents per pound was valid.

The ground on which the assessment was made is, that the act of 2d March, 1867, laying duties on wool after a plan entirely novel as to that subject, was subordinate to the seventh section of the act of 3d March, 1865 (13 Stat., 491, *vide* appendix of this brief), which declares the principle on which valuations for the assessment of ad valorem duties shall be determined, and contains this proviso: "That the duty shall not be assessed upon an amount less than the invoice or entered value, any act of Congress to the contrary notwithstanding," and to the 9th section of the act of 28th July, 1866 (14 Stat., 328, *vide* appendix of this brief), which varies the principle of valuation established by the seventh section of the act of 3d March, 1865, and contains the *proviso* "that the duty shall in no case be assessed upon an amount less than the invoice or entered value."

The collector regarded, and, we respectfully submit, rightly regarded, the provisos in question as general revenue regulations applicable to every case under the customs laws where valuation was necessary for the assessment of duty.

No one would contend that the ninth section of the act of 1866 does not prescribe a rule for the assessment of ad valorem duties under the act of 6th June, 1872, and other subsequent customs laws silent on that head. But supposing

the general rule for the assessment of ad valorem duties should be changed from the actual wholesale price or general market value at the time of exportation to the wholesale price or general market value at the time of purchase, would not the *proviso* that in no case should the duty be assessed on less than the invoice or entered value still continue to be in force? If, then, this *proviso* would, in the case supposed, remain in force as to the assessment of ad valorem duties, should it not also remain in force as to the assessment of duty by grades on wools, seeing that in the acts of 1865 and 1866 the proviso *applies equally to duties by grades and ad valorem duties?* It would seem difficult to escape this conclusion, especially when we take into view that the prior act of 30th June, 1864 (13 Stat., p. 202), imposed (section 4) the same sort of duty on wool as the act of 1867, and also (section 23) contained the same proviso as the acts of 1865 and 1866, making the invoice valuation the minimum valuation.

The argument is strengthened by the twenty-third section of the act of 1st March, 1823 (3 Stat., 737), which provides:

> SEC. 23. *And be it further enacted*, That when any goods, wares, or merchandise shall be admitted to an entry upon invoice, the collector of the port in which the same are entered shall certify the same under his official seal, and no other evidence of the value of such goods, wares, or merchandise shall be admitted on the part of the owner or owners thereof, in any court of the United States, except in corroboration of such entry.

In fine, it may be regarded as a fundamental principle of that part of the revenue system relating to customs

duties, that in every case where the appraisement or valuation falls below the invoice price, the latter is the basis for the assessment of duties. The whole system is largely artificial and arbitrary, and it is in vain to expect to find a better reason for some of its provisions than *quod placuit principi habet vigorem legis.*

To say that the provisos of the acts of 1865 and 1866 do not govern the assessment of duties on wool because they are discrepant from the principle on which the act of 1867 proceeds, looks very much like a *petitio principii.*

It may be asked if the proviso in question is any more inconsistent with the principle of the act of 1867 than it is with the principle of the acts imposing ad valorem duties, in which it is invariably found. If we say that this *proviso* inhibiting the assessment of duties on a valuation lower than that of the invoice is not reconcilable with the act of 1867, which, as we have seen, proceeds on the principle that the market value at the last port of exportation is to be the basis of the assessment, because it must be entirely fortuitous whether the invoice value be the market value at the last port of exportation, we would inquire if this same argument is not just as valid when applied to the laws levying ad valorem duties, which declare either that the basis of the collector's assessment shall be the market value at the time of exportation or at the time of purchase, for, obviously, the invoice value may be higher than the market value, and yet the law is imperative that the importer must pay duty on a higher valuation than the principle of the act requires, and merely because he happened to purchase at a particular price.

Indeed, under the earlier laws, if the invoice value, although representing the actual cost to the importer, chanced to fall 10 per cent. below the export valuation, the collector was compelled to levy an additional penal duty of 20 per cent. on the appraised value, and it was not until much later that Congress authorized the unfortunate importer to enter his merchandise with such additions to the invoice value as he might deem necessary to make the amount entered equal to the export value; and, even then, it was possible for him to incur the penalties of the law if he should *guess* at a valuation 10 per cent. below the appraisement *afterwards* made.

As we have seen, the despotic principle of the *proviso* was not deemed by Congress to be repugnant to the principle of grade duty in the act of 1866, which seems a conclusive answer to the argument that there has been a repeal of the *proviso* by an implication founded on the principle of the act of 1867.

This is not a case where harmony between the two laws *is impossible*, for it is only in that case that the judicial department of the Government is authorized to say that the legislative department passed the last law in ignorance of previous legislation *in pari materia* (*vide* State *v.* Stoll, 17 Wall., 425, 431, and Venable *v.* Richards, 105 U. S., p. 638). We say this is no case for holding a repeal to have taken place by implication, because the legislature must be understood to say, in the act of 1866, that there is no inconsistency between the *proviso* and a levying of duties on precisely the same principle as that contained in the act of 1867, and, certainly, there is nothing in the latter act

to show that Congress had changed its opinion on the subject.

Indeed, the act of 1867 by its very terms confirms our view. It provides in the first section that where "bales of different qualities are embraced in the same invoice at the same prices, whereby the average price shall be reduced more than 10 per cent. below the value of the bale of the best quality, "*the value of the whole shall be appraised according to the value of the bale of the best quality.*" Is this, too, incompatible with the spirit of the act?

In conclusion, we ask the attention of the Court to the opinion of the learned judge of the court below (R., pp. 5–10).

We respectfully submit that the judgment should be affirmed.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

Act 3d March, 1865 (13 Stat., 491).

SEC. 7. *And be it further enacted,* That in all cases where there is or shall be imposed any ad valorem rate of duty on any goods, wares, or merchandise imported into the United States, and in all cases where the duty imposed by law shall be regulated by, or directed to be estimated or based upon, the value of the square yard, or of any specified quantity or parcel of such goods, wares, or merchandise, it shall be the duty of the collector within whose district the same shall be imported or entered to cause the actual market value or wholesale price thereof, at the period of the exportation to the United States, in the principal markets of the country from which the same shall have been imported into the United States, to be appraised, and such appraised value shall be considered the value upon which duty shall be assessed. That it shall be lawful for the owner, consignee, or agent of any goods, wares, or merchandise which shall have been actually purhased, or procured otherwise than by purchase, at the time, and not afterwards, when he shall produce his original invoice, or invoices, to the collector, and make and verify his written entry of his goods, wares, or merchandise, as provided by section thirty-six of the act of March two, seventeen hundred and ninety-nine, entitled "An act to regulate the collection of duties on imports and tonnage," to make such addition in the entry to the cost or value given in the invoice as in his opinion may raise the same to the actual market value or wholesale price of such goods, wares, or

merchandise, at the period of exportation to the United States, in the principal markets of the country from which the same shall have been imported; and it shall be the duty of the collector within whose district the same may be imported or entered to cause such actual market value or wholesale price to be appraised in accordance with the provisions of existing laws, and if such appraised value shall exceed by ten per centum or more the value so declared in the entry, then, in addition to the duties imposed by law on the same, there shall be levied, collected, and paid a duty of twenty per centum ad valorem on such appraised value: *Provided*, That the duty shall not be assessed upon an amount *less than the invoice or entered value*, any act of Congress to the contrary notwithstanding.

Act July 28, 1866 (14 Stat., 330).

SEC. 9. *And be it further enacted*, That in determining the dutiable value of merchandise hereafter imported, there shall be added to the cost, or to the actual wholesale price or general market value at the time of exportation in the principal markets of the country from whence the same shall have been imported into the United States, the cost of transportation, shipment, and transshipment, with all the expenses included from the place of growth, production, or manufacture, whether by land or water, to the vessel in which shipment is made to the United States, the value of the sack, box, or covering of any kind in which such goods are contained; commission at the usual rates, but in no case less than 2½ per centum; brokerage, export duty, and all other actual or usual charges for putting up, preparing, and packing for transportation or shipment. And all charges of a general character incurred in the purchase of a general invoice shall be distributed pro rata among all parts of such invoice, and

every part thereof charged with duties based on value shall be advanced according to its proportion, and all wines or other articles paying specific duty by grades shall be graded and pay duty according to the actual value so determined: *Provided*, That all additions made to the entered value of merchandise for charges shall be regarded as part of the actual value of such merchandise, and if such addition shall exceed by 10 per centum the value so declared in the entry, in addition to the duties imposed by law, there shall be levied, collected, and paid a duty of 20 per centum on such value: *Provided*, That the duty shall in no case be assessed upon an amount less than the invoice or entered value: *Provided further*, That nothing herein contained shall apply to long-combing or carpet wools costing 12 cents or less per pound, unless the charges so added shall carry the cost above 12 cents per pound, in which case 1 cent per pound duty shall be added.

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116-13

Supreme Court of the United States,

OCTOBER TERM, 1885.

THE SAXONVILLE MILLS, *Plaintiffs in Error.*

v.

THOMAS RUSSELL, *Late Collector of Customs.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF MASSACHUSETTS.

SUPPLEMENTAL BRIEF IN REPLY FOR PLAINTIFF IN ERROR.

The argument that the appraiser did report to the collector the value at the last port of exportation excluding, charges at said port, is met

1. By the agreed statement of facts that he did not do so.

2. By the report itself, which expresses an opinion of the law and reports no market value at all.

3. If there is any ambiguity in the language of the report, the agreed statement is competent to explain it, and does so. The appraiser simply reported to the collector his opinion that law forbid him to report the market value at last port, and that he did not report it.

4. The collector's act in classifying §2,931 (Act 1864) is the base of the wrong complained of. He was not bound to follow the opinion of the appraiser on the classification; the decision was the collector's.

5. The defendant in error by his argument would transfer the collector's duties to the appraiser.

The decision of the collector, being based on the invoice, would have been the same whatever the appraiser had reported as the value at the last port. Defendant in error argues it was the duty